



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2015-0321]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 22 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were effective on April 11, 2016. The exemptions expire on April 11, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

I. Background

On March 9, 2016, FMCSA published a notice announcing receipt of applications from 31 individuals requesting an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (81 FR 12553). The public comment period ended on April 8, 2016, and three comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to 22 of 31 individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(8). On April 11, 2016 the remaining nine applicants received a letter

of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial. A notice announcing this decision was published on September 9, 2016 (81 FR 62556).

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

II. Discussion of Comments

FMCSA received three comments in this proceeding. An anonymous commenter and Jake B expressed general support for allowing well controlled individuals with a history of seizures to drive commercially. Deb Carlson of the Minnesota Department of Public Safety expressed support for two applicants included in the notice, Richard Wenner and Dennis Zayic.

III. Basis for Exemption Determination

¹ See http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171. a and <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the epilepsy/seizure standard in 49 CFR 391.41(b)(8) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

In reaching the decision to grant these exemption requests, FMCSA considered the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The January 15, 2013, Federal Register notice (78 FR 3069) provides the current MEP recommendations, which is the criteria the Agency uses to grant seizure exemptions.

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System (CDLIS) for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System (MCMIS). For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA).

These 22 applicants have been seizure-free over a range of 7 to 35 years while taking anti-seizure medication and maintained a stable medication treatment regimen for

the last two years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially. A summary of each applicant's seizure history was discussed in the March 9, 2016, Federal Register notice (81 FR 12553).

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy/seizure standard in 49 CFR 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

IV. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local

enforcement official.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 22 exemption applications, FMCSA exempts the following drivers from the epilepsy/seizure standard, 49 CFR 391.41(b)(8), subject to the requirements cited above:

Travis Earl Baird (OK)	Robert P. Brackett (ME)
Brian R. Checkley, Jr. (NJ)	James Clark (PA)
Kelly Frederick (LA)	William Gessner (PA)
Jerry L. Henderson (IN)	Clarence D. Jones (VA)
Preston Romaine Kanagy (TN)	James Randall King (CT)
Scott A. Lowe (MA)	Roger Lynn Neal (MO)
Thomas Victor Oconnor (FL)	Scott William Reaves (TX)
Steven Shirley (UT)	Matthew Jack Staley (CO)
Michael A. Sypolt (WV)	Peter M. Thompson (FL)
Mohammad S. Warrad (IA)	Richard James Wenner (MN)
John Charles Wolfe (PA)	Dennis Raymond Zayic (MN)

In accordance with 49 U.S.C. 31315(b)(1), each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the individual fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: September 23, 2016

Larry W. Minor
Associate Administrator for Policy

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